

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 982 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

DAVALSHA PIR DARGAH

THRO' TRUSTEE FAKIR SIDIKSHA &1

Versus

JILUBEN INAYATSHA

Appearance:

Mr. Harin Raval for the Petitioners

Mr.Buch of NANAVATY ADVOCATES for Respondent No. 1

NOTICE SERVED for Respondent No. 2

Mr.I.M. Pandya,

Assistant GOVERNMENT PLEADER for Respondent No. 3, 4, 5

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 22/09/2000

ORAL JUDGEMENT

I have heard Mr.Harin Raval for the petitioner,
Mr.Buch for respondent No.1 and Mr.Pandya for respondents
3 to 5.

The petitioner is the original plaintiff of
Regular Civil Suit No.640 of 1996 which is at present
pending in the Court of Civil Judge (S.D.), Junagadh.

The aforesaid suit has been filed by the
plaintiff claiming to be the Trustees of one Devalsha Pir
Dargah, which is a registered Public Trust. It is the
case of the plaintiff in the suit that the
plaintiff-Trust is registered under the Bombay Public

Trusts Act and it owns certain property at Veraval. The property of the Trust is registered as : B-35 before the Charity Commissioner and that the mode of succession is shown in the Register as hereditary. One Fakir Inayatsha was the Trustee and he executed Will in favour of Mahmadsa Alarkhasha, who was appointed as Trustee. According to the plaintiff, pursuant to the aforesaid Will, one Sidiksha Chandsha, who was looking after him, will be entitled to obtain Letters of Administration. According to the plaintiffs, plaintiffs 1 and 2 are the trustees of the Trust as per averments made in the plaint. The plaintiffs have obtained permission from the Charity Commissioner to carry out changes in the property and that the Charity Commissioner, by his order dated 6th June, 1996, permitted investment of the amount to the extent of Rs.1.40 lakhs for constructing 7 shops in the property. But, according to the plaintiffs, since the defendants of the suit were obstructing them from making construction, the aforesaid suit was filed for a declaration and injunction.

In the aforesaid suit, one application was given by a third party at Exhibit 17 for being joined as party under the provisions of Order 1 Rule 10, CPC. The present respondent No.1 herein, Jiluben Inayatsha, also gave an application for joining her as party. Both the aforesaid applications were heard by the learned Civil Judge (S.D.), Junagadh, and allowed both the said applications at Exhibits 17 and 25. So far as Exhibit 17 is concerned, C.R.A. No.980 of 1996 was filed. The said revision was allowed by this Court, taking the view that the said third party was not required to be joined as a party-defendant to the suit. So far as the present Revision Application is concerned, it is against the order passed below Exhibit 25 in the said suit by which respondent No.1 herein was allowed to be joined as party. Therefore, the question which is required to be considered in this Revision Application is whether the respondent No.1 was rightly joined by the trial court as a party-defendant in the said suit or not.

For this purpose, the averments made in application Exhibit 25 is required to be considered. In this revision application, respondent No.1 herein has stated that her husband was one of the Trustees of the plaintiff-Trust. It is her say in the application that taking advantage of ill-health of her husband, certain signatures of her husband were taken under force and duress. On the basis of such writing, change report was effected under the Bombay Public Trusts Act and that the Trustees of the plaintiff-Trust ultimately got themselves

entered in the Register of the Trust. The entire proceedings is, therefore, null and void and that subject to taking proceedings before the Charity Commissioner she requested to join her as party. In her application, she has also further stated that the Trustees are trying to dispose of Trust-property etc. On the said ground, the said application was given under the provisions of Order 1 Rule 10 CPC for joining her as party-defendant in the suit. The learned trial Judge has given cogent reasons to the effect that if the applicant is allowed to be joined as party, no prejudice is likely to be caused to the plaintiffs.

At the time of hearing of the revision application, it was argued by Mr. Harin Raval for the petitioner that whether the change report was rightly effected or not can never be the subject matter before the Civil Court as the same is required to be decided in exercise of powers under the Bombay Public Trusts Act. In his submission, therefore, there was no question of allowing the respondent No.1 herein to be joined as party-defendant to the suit. In his submission, the trial court has committed an error of jurisdiction in passing the impugned order.

As against the aforesaid, Mr. Buch for the respondent No.1 submitted that it cannot be said that the defendant No.1 is a total stranger so far as the present proceedings pending before the Civil Court is concerned. In his submission, when the husband of the respondent No.1 was a Trustee, under duress and taking advantage of his sickness, some writings were obtained. Mr. Buch said that as per the provisions of the Trust Deed, the heirs of the Trustee would be entitled to continue as a Trustee and, therefore, if fraudulently the present plaintiffs have not got their names registered in the Trust Deed, the respondent No.1 herein cannot be said to be a stranger so far as subject matter of the suit is concerned.

Against the said argument, Mr. Raval stated that a lady may not be able to continue as a Trustee. The aforesaid question is required to be considered at the time of trial and not at the threshold of deciding an application for joining as party. Suffice it to say that at least the applicant-respondent No.1 herein cannot be said to be a stranger to the proceedings in question and in my view, therefore, looking to the facts and circumstances of the case, the order passed by the trial court is not required to be interfered with while exercising revisional jurisdiction under Section 115 of

CPC. Of course, so far as the question about correctness of the change report is concerned, the civil court may not be competent to go into that question, but, as stated earlier, the respondent No.1 herein has already stated in the application that separate proceedings to that effect is going to be initiated before the Competent Authority, i.e. before the Charity Commissioner. It cannot be said that she has no direct interest in the subject matter of the suit. Under these circumstances, the order of the trial court is not required to be interfered with and ultimately, the rights of the parties are required to be decided as and when the suit proceeds on merits. Mr. Buch has also relied upon paragraph 9 the judgment of the Supreme Court in Savitri Devi v. District Judge, Gorakhpur and others, (1999) 2 SCC 577, wherein the Supreme Court has said that Order 1 Rule 10 CPC enables the Court to add any person as a party at any stage of the proceedings if the person whose presence before the Court is necessary in order to enable the Court to effectively and completely adjudicate upon and settle all the questions involved in the suit and avoidance of multiplicity of proceedings is also one of the objects of the provisions of the Code. Whether the civil court is competent to decide the controversy in question regarding the change report is a matter to be decided by the Civil Court while deciding the suit and all those questions are not in any way concluded and no opinion is expressed by the Court even prima facie one way or other and it is ultimately for the Court to decide the aforesaid issues. Considering the averment made in the application at Exhibit 25 by respondent No.1, I am of the opinion that the trial court has rightly joined her as a party-defendant in the aforesaid suit.

It cannot be said that she is neither necessary nor proper party as she has got direct interest as per the averment made in the application in the subject matter of the suit. So far as the application given by the residents of Veraval Town, who gave application for joining as party at Exhibit 17, I have already allowed the revision application of the present petitioner herein on the ground that they were not necessary parties. However, so far as the present respondent No.1 is concerned, it cannot be said that she is on the same footing. She has rightly shown her interest in the suit property by virtue of the averments made in the application. In that view of the matter, I do not find any substance in this revision application. This Revision Application is accordingly dismissed. Rule is discharged with no order as to costs. Interim relief is vacated.

(P.B. Majmudar, J.)

(apj)